

STATE OF ALASKA
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL

STANDARD OPERATING PROCEDURE

VII. OVERTIME EXEMPTION

A. Purpose

The purpose of this SOP is to provide guidelines for determining an overtime exemption.

B. Scope

This SOP applies to all positions in the classified service and partially exempt service covered by the Fair Labor Standards Act (FLSA).

C. Authority

Fair Labor Standards Act of 1938, as amended (29 USC 201, et seq.)

LTC Collective bargaining agreement--Article 13.06 (A)

SU Collective bargaining agreement--Article 25.3

PSEA Collective bargaining agreement--Article 15, Section 13

CEA Collective bargaining agreement--Article 7.02

GGU Collective bargaining agreement--Article 22.02, 03, 04

CO Collective bargaining agreement – Article 13

2 AAC 07.390

Alaska Administrative Manual #270

D. General Information

1. The overtime status of a position is determined each time it is reviewed for proper classification, i.e., for every new, reclassified or updated position. Careful consideration must be given to the analysis of FLSA exempt positions. For each position for which a white collar overtime exemption is claimed, an FLSA work sheet must be submitted with the PD.

For flexibly staffed positions, an updated FLSA work sheet must be prepared for each level for which a white collar exemption is claimed each time the PD is updated.

2. FLSA Exempt Codes

Two FLSA exempt codes are used in position classification memoranda, AKPAY data bases, and on computerized PCN listings.

O
v
e
r
t
i
m
e

E
x
e
m
p
t
i
o
n

STATE OF ALASKA
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL

STANDARD OPERATING PROCEDURE

N No. Position is not exempt from (is covered by) the FLSA provisions and therefore:

a. The incumbent of the position is eligible for overtime payment.

OR

b. The incumbent of the position is eligible for overtime payment by collective bargaining agreement. **OR**

c. The incumbent of a position is eligible for overtime payment by decision of the Commissioner of Administration.

Y Yes. Position is exempt from (not covered by) the FLSA overtime provisions, and has not been made eligible for overtime pay by collective bargaining agreement or the Commissioner of Administration, therefore, the incumbent of the position is **not** eligible for overtime payments.

E. Positions Eligible for Overtime by Collective Bargaining Agreement.

Determine the overtime status of a position by first reviewing the collective bargaining agreement language covering the position in question including any pertinent letters of agreement. Collective bargaining agreements may specify that all or some positions will be eligible for overtime. Refer to the contract for the current provisions.

F. FLSA Guidelines

For positions which are not eligible for overtime by collective bargaining agreement, exemption is determined by following FLSA guidelines. It is important to thoroughly read the FLSA regulations and their explanations; however, an overview of the information is provided here.

1. Executive, Administrative, Professional, Computer Related Occupations

Most State of Alaska positions which are exempt from FLSA provisions meet the criteria for one, or a combination, of the Executive, Administrative or Professional, or "white collar" exemptions. These are defined and explained in regulation Title 29, Part 541 of the Code of Federal Regulations, U.S. Department of Labor.

For each of the three categories, there is a "long test" and a "short test" for exemption. Since all State employees earn more than \$250 per week, the "short test" is currently used to determine overtime exemptions. Only rare

O
v
e
r
t
i
m
e

E
x
e
m
p
t
i
o
n

STATE OF ALASKA
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL

STANDARD OPERATING PROCEDURE

situations warrant use of the "long test." See Addendum A for the "short tests".

The FLSA was amended in 1990 to include some computer related occupations under the professional exemption. The specific tests for these occupations are also listed in worksheet form. (See Addendum B)

Combinations: A position may meet the criteria for more than one type of exemption. If so, both exemptions should be noted and documented in the analysis.

2. Discussion of Guidelines

Before making determinations, it is important to review Title 29 Code of Federal Regulations, Part 541. Besides the long and short tests, the regulations define the relevant terms and provide examples of kinds of work that are not exempt. A copy is maintained in the director's office.

In reviewing overtime eligibility, carefully consider the following: The overall level of responsibility, independence of action, authority to make decisions, kind and level of review of decisions, and how decision making may be restricted by regulations and procedures. Keep in mind, that **each exemption requires the exercise of discretion and independent judgment on issues of consequence.**

In determining **primary** duties, all facts in a particular case must be considered. As a general guide, the primary duty involves the major part of the employee's job, or over 50% of the employee's time.

Also consider which of the position's duties are most important, the frequency with which the employee exercises discretionary powers, and the relative freedom from supervision.

The analysis section of the FLSA work sheet should be used to specifically describe exempt duties and why they should be exempt.

3. Other FLSA Exempt Criteria.

There are numerous other categories of employees who are exempt from FLSA. Some that are applicable to the State of Alaska are listed below. (Copies of memoranda are available from the Division of Personnel.)

- a. **Employees on Vessels:** See the memorandum on the subject by Michael P. McMullen, dated March 20, 1986. Also see Part 783,

O
v
e
r
t
i
m
e

E
x
e
m
p
t
i
o
n

STATE OF ALASKA
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL

STANDARD OPERATING PROCEDURE

29 CFR Chapter V which refers to Seamen.

- b. **Fish Farming:** See Part 784, 29 C.F.R. Chapter V.
- c. **Fire Fighting:** See Michael P. McMullen's memorandum of April 17, 1986, to Marianne Brustad on the subject.

G. Appeal of Overtime Eligibility Decisions

1. Administrative Appeal

If an overtime eligibility decision has been based on review of an updated PD, and the employee disagrees, the employee may appeal the decision to the personnel manager. This administrative procedure also applies if a department without delegated authority disagrees with a decision made by the Department of Administration.

2. Contractual Appeal Procedure, Overtime Hearing: SU

Per the SU collective bargaining agreement, Article 25.3B, the parties may agree to select a third party hearing officer to determine questions of disputed overtime eligibility consistent with FLSA when the State's determination is disputed by the employee affected.

3. Overtime Hearings: Historical

Prior to April 16, 1984, there were provisions for employees in the GGU to appeal to hearing officers in cases of disputed overtime eligibility. Employees who were determined eligible by overtime hearings shall remain unchanged **as long as they remain in the same position**. Results of those hearings are in the Labor Relations Section.

H. Alaska Administrative Manual: Authorization for Overtime Eligibility

Per Alaska Administrative Manual 270.100, a department head may petition the Commissioner of Administration to authorize overtime payments for exempt employees in unusual situations. The Administrative Manual gives guidelines for consideration.

Requests are forwarded directly to the Commissioner of Administration. The Division of Personnel will review requests at the direction of the Commissioner.

O
v
e
r
t
i
m
e

E
x
e
m
p
t
i
o
n